

ANNE E. LOPEZ 7609

Attorney General of Hawai‘i

PATRICK K. KELLY 7290

STUART N. FUJIOKA 4223

Deputy Attorneys General

Dept. of the Attorney General

465 S. King Street, Suite 300

Honolulu, Hawai‘i 96813

Telephone: (808) 587-2992

Email: [patrick.k.kelly@hawaii.gov](mailto:patrick.k.kelly@hawaii.gov)  
[stuart.n.fujioka@hawaii.gov](mailto:stuart.n.fujioka@hawaii.gov)

Attorneys for Defendants

STATE OF HAWAI‘I; DEPARTMENT OF

TRANSPORTATION, STATE OF

HAWAI‘I; and EDWIN SNIFFEN, in his official

capacity as Director of the Department of

Transportation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

HELICOPTER ASSOCIATION  
INTERNATIONAL, SAFARI  
AVIATION, INC. d/b/a SAFARI  
HELICOPTERS HAWAI‘I,

Plaintiff,

v.

STATE OF HAWAI‘I;  
DEPARTMENT OF  
TRANSPORTATION, STATE OF  
HAWAI‘I; EDWIN SNIFFEN, in his  
official capacity as Director of

CIVIL NO. 1:23-CV-00083-LEK-WRP

DEFENDANT EDWIN SNIFFEN’S  
ANSWER TO PLAINTIFFS’ FIRST  
AMENDED COMPLAINT;  
CERTIFICATE OF SERVICE

Judge:

Hon. Leslie E. Kobayashi

Magistrate Judge:

Hon. Wes Reber Porter

Hawai‘i Department of  
Transportation,

Defendants.

**DEFENDANT EDWIN SNIFFEN’S ANSWER TO PLAINTIFFS’ FIRST  
AMENDED COMPLAINT**

Defendant EDWIN SNIFFEN, in his official capacity as Director of the Hawaii Department of Transportation (Defendant), answers Plaintiffs’ First Amended Complaint filed May 8, 2023 (“FAC”) as follows:

**FIRST DEFENSE**

The FAC fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

**Nature of the Case**

1. In response to the allegations contained in paragraphs 1, 2, 3, 9, 10 and 11 of the FAC, Plaintiffs state legal conclusions which require no response. To the extent that a response is required, these allegations are denied.

2. Defendant denies the allegations contained in paragraph 4, 5, 6, 7 and 8 of the FAC.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 12 and 13 of the FAC and accordingly denies same.

**Parties**

4. Defendant admits the allegations contained in paragraphs 16, 17 and 18 of the FAC.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 14 and 15 of the FAC and accordingly denies same.

**Jurisdiction and Venue**

6. In response to the allegations contained in paragraph 19 of the FAC, Plaintiffs state legal conclusions which require no response. To the extent that a response is required, these allegations are denied.

7. In response to the allegations contained in paragraph 20 of the FAC, Defendant admits his residency and is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations and accordingly denies same.

**Factual Allegations**

8. In response to the allegations contained in paragraphs 24, 26, 27, 29, 30, 31, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 60, 65, 66, 67, 68, 69,

71, 72, 74, 75, 76, 77, 80, 81, 82, 83, 85, 86, 87, 88, 89, 90, 92, 93, 94 and 99 of the FAC, Plaintiffs state legal conclusions which require no response. To the extent that a response is required, these allegations are denied.

9. Defendant admits the allegations contained in paragraph 21 of the FAC.

10. Defendant denies the allegations contained in paragraphs 23, 25, 32, 52, 55, 73 and 91 of the FAC.

11. In response to the allegations contained in paragraph 22 of the FAC, Defendant admits that the paragraph accurately quotes a portion of a statement attributed to the Governor, and is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations and accordingly denies same.

12. In response to the allegations contained in paragraph 70 of the FAC, Defendant admits that the State of Hawaii owns airports and is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations and accordingly denies same.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 28, 33, 34, 35, 36, 37 38, 39, 56, 57, 58, 59, 61, 62, 63 64, 78, 79, 84, 95, 96 and 97 of the FAC and accordingly denies same.

14. In response to the allegations contained in paragraph 98 of the FAC, the document speaks for itself.

**Count I**

15. In response to paragraph 100 of the FAC, Defendant incorporates by reference his responses to paragraphs 1-99 of the FAC.

16. In response to the allegations contained in paragraphs 101 and 104 of the FAC, Plaintiffs state legal conclusions which require no response. To the extent that a response is required, these allegations are denied.

17. Defendant denies the allegations contained in paragraphs 102, 103, 105, 107 and 108 of the FAC.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 106 of the FAC and accordingly denies same.

**Count II**

19. In response to paragraph 109 of the FAC, Defendant incorporates by reference his responses to paragraphs 1-108 of the FAC.

20. In response to the allegations contained in paragraphs 110, 111 and 112 of the FAC, Plaintiffs state legal conclusions which require no response. To the extent that a response is required, these allegations are denied.

21. Defendant denies the allegations contained in Paragraphs 113, 115 and 116 of the FAC.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 114 of the FAC and accordingly denies same.

### **Count III**

23. In response to paragraph 117 of the FAC, Defendant incorporates by reference his responses to paragraphs 1-116 of the FAC.

24. In response to the allegations contained in paragraphs 118, 119, 120 and 121 of the FAC, Plaintiffs state legal conclusions which require no response. To the extent that a response is required, these allegations are denied.

25. Defendant denies the allegations contained in paragraphs 123, 124, 125 and 126 of the FAC.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 122 of the FAC and accordingly denies same.

### **Count IV**

27. In response to paragraph 127 of the FAC, Defendant incorporates by reference his responses to paragraphs 1-126 of the FAC.

28. In response to the allegations contained in paragraphs 128, 129, 130 and 131 of the FAC, Plaintiffs state legal conclusions which require no response. To the extent that a response is required, these allegations are denied.

29. Defendant denies the allegations contained in paragraphs 132, 133 and 134 of the FAC.

### **Count V**

30. Pursuant to the Court’s “Order Granting in Part and Denying in Part Defendant’s Motion to Dismiss” filed on October 17, 2023 (Document 30), this count was dismissed with prejudice and Defendant makes no response to paragraphs 135-142 of the FAC.

### **THIRD DEFENSE**

This Court lacks subject matter jurisdiction over the claims alleged in the FAC.

### **FOURTH DEFENSE**

Plaintiffs lack standing to assert the claims alleged in the FAC.

### **FIFTH DEFENSE**

Plaintiffs are barred from maintaining this action for failure to exhaust their administrative remedies, lack of ripeness or premature assertion.

SIXTH DEFENSE

Plaintiffs are barred from maintaining this action due to the nonoccurrence of a condition precedent, specifically the improper promulgation and/or enforcement of Administrative Rules.

SEVENTH DEFENSE

Defendants reserve the right to assert other defenses and matters constituting an avoidance or affirmative defense to the Complaint, including those set forth in Rule 8(c), Rule 9, Rule 12(b), and Rule 12(h) of the Federal Rules of Civil Procedure, which may become applicable as the result of further investigation, discovery, or trial in this matter.

WHEREFORE, Defendants respectfully pray and request that the Court:

- A. Dismiss the FAC in its entirety or otherwise deny the relief requested therein.
- B. Grant such further and other relief as this Court deems appropriate and equitable herein.

DATED: Honolulu, Hawai‘i, October 31, 2023.

/s/ Stuart N. Fujioka  
PATRICK K. KELLY  
STUART N. FUJIOKA  
Deputy Attorneys General

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

HELICOPTER ASSOCIATION  
INTERNATIONAL, SAFARI  
AVIATION, INC. d/b/a SAFARI  
HELICOPTERS HAWAI'I,

Plaintiff,

v.

STATE OF HAWAI'I;  
DEPARTMENT OF  
TRANSPORTATION, STATE OF  
HAWAI'I; EDWIN SNIFFEN, in his  
official capacity as Director of  
Hawai'i Department of  
Transportation,

Defendants.

CIVIL NO. 1:23-CV-00083-LEK-  
WRP

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the date and by the method of service noted  
below, a true and correct copy of the foregoing document was served on the  
following at their last known address:

Served electronically through CM/ECF:

Calvert G. Chipchase  
Lisa K. Swartzfager  
Molly A. Olds  
1000 Bishop Street, Suite 1200  
Honolulu, Hawai‘i 96813-4212  
Telephone: (808) 521-9200

Email: [cchipchase@ades.com](mailto:cchipchase@ades.com)  
[lswartzfager@ades.com](mailto:lswartzfager@ades.com)  
[molds@ades.com](mailto:molds@ades.com)

Attorneys for Plaintiffs HELICOPTER ASSOCIATION  
INTERNATIONAL and SAFARI AVIATION, INC. d/b/a  
SAFARI HELICOPTERS HAWAI‘I

DATED: Honolulu, Hawai‘i, October 31, 2023.

/s/ Stuart N. Fujioka  
PATRICK K. KELLY  
STUART N. FUJIOKA

Attorneys for STATE OF HAWAI‘I;  
DEPARTMENT OF TRANSPORTATION,  
STATE OF HAWAI‘I and EDWIN SNIFFEN, in  
his official capacity as Director of the Hawai‘i  
Department of Transportation